

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**BRIAN TEED, on behalf of himself
and all others similarly situated,**

08-cv-303-bbc

Plaintiff,

v.

**THOMAS & BETTS POWER SOLUTIONS, LLC
a domestic corporation, *et al.***

Defendant,

**MARCUS CLAY, on behalf of himself
and all others similarly situated,**

09-cv-313-bbc

Plaintiff,

v.

**THOMAS & BETTS POWER SOLUTIONS, LLC
a domestic corporation, *et al.***

Defendant,

**PLAINTIFFS' PROPOSED FINDINGS OF FACT
IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Now comes Plaintiffs, on behalf of themselves and all others similarly situated, and hereby makes the following proposed findings of fact in support of their Motion for Partial Summary Judgment.

PROPOSED FINDINGS OF FACT

Parties

1. JT Packard is a provider for network-critical power equipment and services to customers throughout the country. (Answer ¶¶ 2, 7, Dkt. 15.)¹
2. JT Packard employs Field Engineers who perform preventative maintenance and emergency services for JT Packard's customers at various site locations throughout their assigned territories and occasionally in other territories throughout the country. (Answer ¶ 13, Dkt. 15.)

FLSA Coverage

3. JT Packard employment relationships with Plaintiff and all their other employees are subject to the FLSA. (Answer ¶ 39, Dkt. 15.)
4. JT Packard is subject to the overtime pay requirements of the FLSA as JT Packard is an enterprise engaged in commerce and Field Engineers are engaged in commerce. (Answer ¶¶ 43, 44, Dkt. 15.)
5. JT Packard's employment relationships with its Field Engineers are subject to the FLSA. (Answer ¶ 39, Dkt. 15.)
6. JT Packard Field Engineers worked in excess of forty hours in various workweeks. (Answer ¶ 22, Dkt. 3 3:09-cv-00313.)

Field Engineers Job Duties

7. JT Packard's Field Engineers are salaried employees who did not receive overtime premium compensation when they work more than forty hours in a workweek. (Answer ¶¶ 2 – 3, 12, 20, Dkt. 15.)
8. Field Engineers learn how to do their job through on the job training and other training programs from various organizations. There are no college courses which teach UPS repair. (Sears Dep. pp. 168:21 to 169:3 on July 31, 2010.)²
9. JT Packard's field engineers do not have a traditional workplace outside their homes to which they regularly report. (Answer ¶ 13, Dkt. 15.)
10. JT Packard field engineers may maintain a home office. (Answer ¶ 13, Dkt. 15.)
11. JT Packard provides field engineers a laptop computer. (Answer ¶ 13, Dkt. 15.)

¹ JT Packard's Answer to Plaintiff's Second Amended Complaint simply incorporates its Answer to Plaintiff's First Amended Complaint. *See* Dkt. 26. Furthermore, JT Packard's Amended Answer (Dkt. 111) exists only to amend the previous stated affirmative defenses.

² The transcript of Dan Sears' July 31, 2010 deposition has previously been filed with the Court as Dkt. 91.

12. JT Packard's field engineers have access to a company e-mail account and JT Packard's intranet on their company issued laptops. (Answer ¶ 13, Dkt. 15.)
13. JT Packard's field engineers receive scheduled assignments of routine maintenance from customer service account managers by e-mails that they access on their company issued laptops. (Answer ¶ 13, Dkt. 15.)
14. JT Packard field engineers perform certain paperwork on that company issued laptops. (Answer ¶ 13, Dkt. 15.)
15. Part of a Field Engineer's necessary duties are to check the laptop to see what routine maintenance assignments have been given to him. (Answer ¶ 13, Dkt. 15.)
16. JT Packard requires its Field Engineers to check their e-mail accounts twice daily, view the service calendar for any schedule changes and call customers to confirm upcoming appointments, including that day's appointments. (Answer ¶ 15, Dkt. 15.)
17. Field Engineers check their email accounts, view their service calendars for any schedule changes and call customers to confirm upcoming appointments prior to leaving their home offices. (Answer ¶ 15, Dkt. 15.)
18. When Field Engineers check their email accounts, view their service calendars for any schedule changes and call customers to confirm upcoming appointments prior to leaving their home offices, they perform tasks that are performed for JT Packard's benefit and that they are an integral and indivisible part of the field engineer's principal activity of providing routine and emergency services to JT Packard's customers or clients. (Answer ¶ 15, Dkt. 15.)
19. The time spent by Field Engineers checking their JT Packard email account is a principle activity. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 18.³)
20. The time spent by Field Engineers checking their JT Packard email account prior to traveling to a customer's location is compensable time under the FLSA. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 19.)
21. JT Packard issues cell phones to its field engineers and field engineers are required to keep those phones on and with them at all times unless they are on PTO (Paid Time Off) or Off Call time. (Answer ¶ 14, Dkt. 15.)
22. Unless a Field Engineer is on PTO or Off Call time, JT Packard requires its Field Engineers to be available for emergency dispatch to a customer location, customer technical support, and general communication with JT Packard and other service technicians. (Answer ¶ 14, Dkt. 15.)
23. Field Engineers provide each other with tech support. (Sears Dep. pp. 128:22 to 128:24.)

³ Defendant's Responses to Plaintiff's First Set of Admissions are attached as Exhibit A to the Declaration of Larry A. Johnson filed contemporaneously with this document.

24. Field Engineers talk with schedulers on a regular basis. (Sears Dep. pp. 128:10 to 128:13.)
25. JT Packard's policy is that voice messages should be returned within 15 minutes of receiving the message. (Answer ¶ 14, Dkt. 15; Sears Dep. pp. 128:1 to 128:9.)
26. Pursuant to its customer contracts, JT Packard tries to have a Field Engineer onsite of an emergency assignment within four hours of JT Packard being notified by the customer of the need for emergency service. (Answer ¶ 14, Dkt. 15.)
27. JT Packard Field Engineers performed a principle activity when they checked their voicemail. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 22.)
28. The time JT Packard Field Engineers spent checking their voicemail prior to leaving for a customer's location is compensable under the FLSA. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 23.)
29. After completing a job, field engineers are to complete and submit a FSR to the corporate office. (Answer ¶ 16, Dkt. 15.)
30. Completing and submitting service reports is performed for JT Packard's benefit and is integral and indivisible part of the field engineer's principal activity of providing routine and emergency services to JT Packard's customers or clients. (Answer ¶ 16, Dkt. 15.)
31. JT Packard requires Field Engineers to check their e-mail twice daily, and that such checks may sometimes occur at the field engineers' homes. (Answer ¶ 16, Dkt. 15.)
32. The travel time Field Engineers spend going to and from the customer's location is compensable. (Answer ¶ 42, Dkt. 15.)
33. Field Engineers are required by JT Packard to maintain their tools. (Sears Dep. pp. 138:6 to 138:22.)
34. Field Engineers are required by JT Packard to obtain batteries from the hardware store. (Sears Dep. pp. 138:6 to 138:22.)
35. Field Engineers are required by JT Packard to obtain various fuses. (Sears Dep. pp. 138:6 to 138:22.)
36. Field Engineers talk with their regional managers on the phone. (Sears Dep. pp. 129:25 to 130:3.)
37. JT Packard's policies require its Field Engineers to contact the customer forty-eight hours prior to going to the customers' location to confirm the visit. (Sears Dep. pp. 130:20 to 131:3.)

38. JT Packard Field Engineers must check their email at least twice a day so that they are aware of job assignments or if they have emails from other departments regarding their reports or their work. (Sears Dep. pp. 132:1 to 132:25.)
39. Field Engineers are expected to be familiar with the piece of equipment they will be working on when they arrive at the customer site, including reviewing a manual on the equipment prior to going to the customer location. (Sears Dep. pp. 146:2 to 147:2.)
40. Field Engineers drive cars, trucks or vans to JT Packard customer locations. (Answer ¶ 17, Dkt. 15.)
41. Field Engineers must follow the same policies and procedures established by JT Packard including those in JT Packard's Field Service Engineer Policies, Procedures and Guidelines. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶¶ 30-33; Sears Dep. Ex. 9.)

JT Packard's record keeping

42. A Field Service Report is a document that's used to communicate a job assignment to a field engineer and provide a vehicle for them to report back the actions they perform, their recommendations, their time on the job, portal to portal, and parts used as well as there is a section on there for some meter readings, display meter readings. (Sears Dep. pp. 125:12 to 125:18.)
43. A part of the FSR filled in by the Field Engineers is a section titled labor details where the Field Engineers record the date the Field Engineers perform work at a customer location and the travel time to the customer location, the time at the customer location, and the travel time back from the customer location. (Sears Dep. pp. 125:24 to 127:11, 134:25 to 135:14; Sears Dep. Ex. 9, Bates Stamp JTP00001835.)
44. JT Packard's policy on how to fill out the labor section of the FSR is enumerated in Paragraph 7 of the Field Service Engineer Policies, Procedures and Guidelines Manual. (Sears Dep. pp. 136:3 to 136:20; Sears Dep. Ex. 9, Bates Stamp JTP00001835.)
45. The information that was recorded on the FSR pursuant to Paragraph 7 of the Field Service Engineer Policies, Procedures and Guidelines Manual is the only record of the amount of time Field Engineers worked. (Sears Dep. pp. 137:1 to 137:7; Sears Dep. Ex. 9, Bates Stamp JTP00001835.)
46. JT Packard's policy regarding filling out an FSR, in Paragraph 7, does not require Field Engineers to record the time it takes them to maintain their tools, to obtain batteries from the hardware store, to obtaining various fuses. (Sears Dep. pp. 138:6 to 138:22; Sears Dep. Ex. 9, Bates Stamp JTP00001835.)
47. There are Field Engineers who fill out the FSR at home which would not be recorded on the FSR because it is outside of the time periods in Paragraph 7 of the Field Service Engineer Policies, Procedures and Guidelines Manual. (Sears Dep. pp. 139:17 to 140:16; Sears Dep. Ex. 9, Bates Stamp JTP00001835.)

48. There are a number of tasks a Field Engineer performs, the time for which it takes to do is not recorded in the FSR including putting gas in the Field Engineers car, submitting FSRs, checking his JT Packard email. (Sears Dep. pp. 127:12 to 127:25.)
49. Although Field Engineers speak with JT Packard's schedulers, that time is not recorded on the FSR. (Sears Dep. pp. 128:10 to 128:20; 135:15 to 136:2.)
50. Although Field Engineers provide each other tech support by phone, JT Packard does not have a policy that requires that this time be recorded on the FSR or anywhere else; rather JT Packard leaves it up to the technician to fill out an additional FSR for that time. (Sears Dep. pp. 128:22 to 129:24; 135:15 to 136:2.)
51. Although Field Engineers talk with their regional managers on the phone, there are times when this time is not recorded on the FSR. JT Packard does not have a policy that requires that this time be recorded on an FSR. (Sears Dep. pp. 129:25 to 130:18; 135:15 to 136:2.)
52. Although JT Packard requires its Field Engineers to contact the customer prior to arriving at the customer location for a site visit, there is nowhere that that time is recorded – on the FSR or elsewhere. (Sears Dep. pp. 130:20 to 131:16; 135:15 to 136:2.)
53. JT Packard does not require its Field Engineers to record on the FSR the time they spend on the phone receiving a call about an emergency call. (Sears Dep. pp. 131:17 to 131:25; 135:15 to 136:2.)
54. Although JT Packard requires its Field Engineers to check their email at least twice a day, JT Packard does not require this time be recorded on the FSR. (Sears Dep. pp. 132:1 to 133:4; 135:15 to 136:2.)
55. Despite Field Engineers being required to be familiar with a piece of equipment prior to arriving at the customers site, Field Engineers policies do not require Field Engineers to record that time in the FSR. (Sears Dep. pp. 146:2 to 147:14.)
56. The labor details section of the FSR is filled out for the customers benefit more than anyone else's. (Sears Dep. pp. 153:17 to 153:22.)

JT Packard Affirmative Defenses

57. JT Packard did not rely on any ruling, regulation, interpretation or decision of any kind issued, promulgated or drafted by the United States Department of Labor in support of JT Packard's failure to pay its Field Engineers overtime premium compensation. (Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 46.)
58. JT Packard has failed to identify any facts that it relied on any ruling, regulation, interpretation or decision of any kind issued, promulgated or drafted by the United States Department of Labor in support of JT Packard's failure to pay its Field Engineers

overtime premium compensation. (Def.'s Answer to Pl.'s First Interrogs. ¶¶ 5, 9;⁴ Def.'s Resp. to Pl.'s First Req. For Admis. ¶ 46.)

59. Dan Sears is currently the Director of North American Service Operations for JT Packard and Field Services reports to him. (Sears Dep. pp. 19:17 to 20:4.)

60. In 2006, when Bray purchased JT Packard, JT Packard's then management represented that the field engineers were not entitled to separate overtime compensation and were being lawfully compensated. Bray relied on that representation and was unaware of any reason to further examine whether Packard's compensation system complied with the FLSA until this lawsuit was filed. (Def.'s Answer to Pl.'s First Interrogs. ¶ 9.)

Venue and Jurisdiction

61. JT Packard admits that this Court has subject matter jurisdiction under 28 U.S.C. § 1331. (Answer ¶ 4, Dkt. 15.)

62. JT Packard admits that venue in this district is proper. (Answer ¶ 5, Dkt. 15.)

Respectfully submitted this 1st day of August, 2011.

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⁴ Defendant's Responses to Plaintiff's First Set of Admissions are attached as Exhibit B to the Declaration of Larry A. Johnson filed contemporaneously with this document.